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Network Service Division
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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition of the)
Massachusetts Department of)
Telecommunications and Energy)
for Waiver to Implement a)
Technology-Specific Overlay in the)
508, 617, 781, and 978 Area Codes)

NSD-L-98-17

CC DOCKET 96-98

AT&T CORP. OPPOSITION

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3, AT&T Corp. ("AT&T") hereby submits its opposition to the Petition for Waiver filed by the Massachusetts Department of Telecommunications and Energy ("DTE").^{1/} In its Petition, the DTE seeks authority to implement a wireless-only overlay, purportedly to avoid the consumer confusion and inconvenience associated with area code relief. As demonstrated below, the DTE's request fails to satisfy the Commission's stringent standards for waiver requests. Accordingly, the Petition should be denied.

Under the Commission's rules, waivers may only be granted "if good cause therefor is shown."^{2/} This standard requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."^{3/} Further, a petitioner's articulation of special circumstances must go substantially beyond factors considered

^{1/} See Public Notice, Common Carrier Bureau Seeks Comment on Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 879 Area Codes DA 99-46, NSD File No. L-99-17 (rel. Mar. 4, 1999).

^{2/} 47 C.F.R. §1.3.

^{3/} Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C.Cir. 1990), citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C.Cir. 1970) (indicating that waiver of the Commission's rules is appropriate only if

during the rulemaking proceeding in which the rule in question was promulgated.^{4/} The DTE Petition falls far short of this standard.

Far from demonstrating that special circumstances exist, the DTE requests that the Commission act on the mere possibility that some unspecified special circumstances might exist. Specifically, the DTE asks that its waiver be granted because “the circumstances in Massachusetts may be different from the circumstances in existence when the Commission originally prohibited technology specific or service specific area code overlays in 1995.”^{5/} The DTE fails to elaborate on what these potential differences might be, or to articulate their relevance to the Commission’s long-standing ban on wireless overlays. Instead, the DTE merely argues that “state regulators should have the option of investigating and weighing the advantages of a technology-specific overlay.”^{6/} This contention is plainly inadequate – a waiver of the Commission’s long-standing and well-reasoned policy cannot rest on sheer ipse dixit.

The Commission has considered and explicitly rejected other states’ arguments that they should have a right to adopt wireless-only overlays as a form of area code relief. The DTE’s petition adds nothing new to the record. In 1995, the FCC concluded that Ameritech’s proposed wireless-only overlay would unreasonably discriminate against wireless carriers, in violation of the principle of

special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.).

^{4/} See Industrial Broadcasting Co. v. FCC, 437 F.2d 680, 683 (D.C.Cir. 1970).

^{5/} Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 879 Area Codes, DA 99-46, NSD File No. L-99-17 (filed February 12, 1999) (emphasis added) (“DTE Petition”).

^{6/} DTE Petition at 3.

technological neutrality, and would thwart the FCC's goals of encouraging new services and additional competition.^{7/}

The following year the Commission reaffirmed this reasoning, concluding in its Second Local Competition Order^{8/} that a technology specific overlay proposed by the Texas Public Utilities Commission (the "Texas PUC") violated the Ameritech Order.^{9/} The FCC specifically found unpersuasive the Texas PUC's arguments that a wireless-only overlay would extend the life of existing NPAs and reduce customer confusion.^{10/} The DTE presents no evidence challenging the Commission's prior reasoning, but simply reasserts an argument that the Commission has twice rejected – that states should be able to consider wireless only overlays as an area code relief option. The petition is plainly inadequate to warrant the extraordinary relief sought by the DTE.

CONCLUSION

As the Commission has repeatedly found, isolating wireless customers into a new area code would discriminate unfairly and unnecessarily based on technology, in violation of the Communications Act. Nothing in the DTE's petition calls the Commission's prior conclusions into

^{7/} Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596, 4604-05, ¶ 20 (1995) ("Ameritech Order").

^{8/} Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19508 ¶ 281 (1996) ("Second Local Competition Order") ("We find that the guidelines and the reasoning enumerated in [the Ameritech] decision should continue to guide the states and other entities participating in the administration of numbers because these guidelines are consistent with Congress' intent to encourage vigorous competition in the telecommunications marketplace.").

^{9/} Second Local Competition Order, 11 FCC Rcd at 19527 ¶ 304.

^{10/} Id., 11 FCC Rcd at 19528 ¶ 306. Moreover, the only wireless-only overlay implemented to date (the 917 NPA in New York City) was recently terminated. See Case No. 98-C-1331, Joint Petition of Nextel Communications of Mid-Atlantic, Inc. Cellco Partnership d/b/a Bell Atlantic Mobile, Omnipoint Communications, Inc., Cellular Systems Inc. d/b/a AT&T Wireless Services and AT&T Communications of New York, Inc. to Amend the Commission's Orders Issued July 1, 1991 in Case 90-C-0347 and December 10, 1997 in Case 96-C-1158, Order Granting Petition (Feb 3, 1999). In this Order, the New York Public Service Commission reinstated wireless carriers' access to codes in the 718 NPA. The Order followed an industry consensus decision to allow wireline carriers access to codes in the 917 NPA.

question, or even purports to demonstrate unique or changed circumstances that might warrant the relief requested. AT&T urges the Commission to deny the DTE's petition forthwith.


Respectfully submitted,

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I, Dorothy E. Love, hereby certify that on this 5th day of April, 1999, I caused copies of the foregoing "AT&T Corp. Opposition" to be sent to the following by hand delivery* or by first class mail:

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